

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

ADAM RAMOS,  
*Appellant.*

No. 2 CA-CR 2019-0211  
File June 30, 2020

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).*

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Appeal from the Superior Court in Pinal County  
No. S1100CR201600500  
The Honorable Christopher J. O'Neil, Judge

**AFFIRMED**

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COUNSEL

Michael Villarreal, Florence  
*Counsel for Appellant*

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

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ECKERSTROM, Judge:

¶1 After a jury trial held in his absence,<sup>1</sup> appellant Adam Ramos was convicted of aggravated driving with a blood alcohol concentration (BAC) of .08 or more and aggravated driving under the influence (DUI), both while his license was suspended and revoked. The trial court sentenced Ramos to enhanced, aggravated, and concurrent fourteen-year prison terms. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530 (App. 1999), stating he has reviewed the record and has found no “arguable issues on appeal.” Counsel has asked us to search the record for error. In a supplemental pro se brief, Ramos asserts the trial court wrongfully “discounted” mental health evidence presented in mitigation at sentencing.<sup>2</sup>

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<sup>1</sup>Ramos did not appear at trial and was not taken into custody until nine months later, thereby delaying his sentencing by more than ninety days. See A.R.S. § 13-4033(C). But the record before us does not show that Ramos was warned that he would forfeit his right to appeal by delaying sentencing, nor has the state moved to dismiss on that basis. Because Ramos’s waiver cannot be deemed voluntary in the absence of a warning, § 13-4033(C) cannot be constitutionally applied. See *State v. Bolding*, 227 Ariz. 82, ¶ 20 (App. 2011) (provision “constitutional when the defendant’s voluntary delay of sentencing can be regarded as a knowing, voluntary, and intelligent waiver of his constitutional right to appeal”).

<sup>2</sup>Ramos also raises various claims of ineffective assistance of trial counsel and asks this court to issue subpoenas and appoint an investigator. But claims of ineffective assistance must be raised in a petition pursuant to Rule 32, Ariz. R. Crim. P., and we therefore do not address those claims on appeal. See *State v. Spreitz*, 202 Ariz. 1, ¶ 9 (2002).

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¶2 Viewed in the light most favorable to sustaining the verdict, *see State v. Delgado*, 232 Ariz. 182, ¶ 2 (App. 2013), the evidence was sufficient to support the jury’s finding of guilt, *see* A.R.S. §§ 28-1381(A)(1), (2), 28-1383(A)(1). The evidence presented at trial showed that Ramos – who had four prior historical felony convictions, was on community supervision, and whose license had been suspended – exhibited cues of impairment on roadside sobriety tests and was found to have a BAC of .178 to .199 at the time of driving. We further conclude the sentences are within the statutory limit and were lawfully imposed. *See* A.R.S. §§ 13-703(C), (J), 28-1383(O)(1). The trial court stated it “thoroughly considered [Ramos’s] mental health” in mitigation, but found Ramos had “exaggerated” his mental health issues to “avoid[] responsibility” and therefore discounted their weight at sentencing. A trial court has broad discretion in determining the weight to assign aggravating and mitigating circumstances for sentencing purposes. *State v. Harvey*, 193 Ariz. 472, ¶ 24 (App. 1998). It “does not act arbitrarily if it investigates all the facts relevant to sentencing and finds aggravating and mitigating factors within the statutory guidelines,” as the court did here. *Id.*

¶3 Pursuant to our obligation under *Anders*, we have considered Ramos’s supplemental brief and searched the record for fundamental, reversible error and have found none. Therefore, Ramos’s convictions and sentences are affirmed.